

Appl. No. 09/814,402
Amdt. dated May 12, 2006
Reply to Office Action of January 12, 2006

INTERVIEW SUMMARY AND REMARKS

Applicant's attorney thanks the Examiner for her comments and for her thoughtful analysis of the references. Claims 1-7, 10-18, 28-29, 35-38, 53-56 and 59-67 are presented for the Examiner's consideration. Claims 53 and 54 have been amended to designate a web comprising a superabsorbent material content of at least about 80% by dry weight and a web loss of less than about 3%. Support for this amendment can be found in the Examples and Tables in the present specification. Claim 61 has been amended to properly depend upon claim 60. Claims 8-9, 19-27, 30-34, 39-52 and 57-58 have been canceled.

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

Applicants' attorney thanks Examiner Stephens for the courtesy of the telephone interview on April 19, 2006. The interview included a discussion of Applicants' invention along with the prior art, U.S. Patent No. 3,901,236 to Assarsson et al. ("Assarsson") and U.S. Patent No. 5,516,569 to Veith et al. ("Veith").

With respect to Assarsson, Applicants distinguished the present invention by explaining that the product of Assarsson requires that fibers are coated onto superabsorbent particles, and the particles are then dried to form dry, fiber-coated superabsorbent particles. These dry particles are then sieved and then incorporated into a dry web using an airlaid process. With regard to shakeout, the product of Assarsson relies on interactions between dry, fiber-coated superabsorbent particles and the dry fibers of the web. The result is a shakeout value that generally increases as superabsorbent content increases. In contrast, Applicants' explained that their invention discloses wetting a superabsorbent material (such that it becomes tacky) and then combining the wet

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superabsorbent material with fiber to form a web. The result is a shakeout value that generally decreases as superabsorbent content increases.

Applicants explained that the shakeout results of Example 2, Example 3 and Comparative 2 in Applicants' disclosure demonstrate the distinction between Applicants' invention and Assarsson as discussed above. However, the Examiner felt that other factors, such as particle size, the manner in which the fibers are adhered to the superabsorbent, and the moisture content in the web, affect the shakeout results. Applicants explained that Comparative Example 2 was made in accordance with Assarsson, and that the same superabsorbent material and fibers were utilized in the examples in an effort to keep "other factors" constant. The Examiner invited Applicants to submit an affidavit that Comparative Example 2 was the Assarsson product. Applicants did not feel that an affidavit was necessary, but rather offered to provide guidance as to the comparison of Comparative Example 2 with Assarsson. The Examiner agreed to consider such a comparison.

With regards to Veith, Applicants informed the Examiner that additional comparative samples were recently produced by Applicants in accordance with Veith utilizing the same superabsorbent material and the same fiber as Applicants' Example 2 and Example 3, in an effort to keep "other factors" constant. Applicants stated that these comparative samples made in accordance with Veith exhibited a shakeout value that generally increased as superabsorbent content increasef. In contrast, Applicants' Example 2 and Example 3 resulted in a shakeout value that generally decreased as superabsorbent content increased, as seen in the present disclosure. The Examiner instructed Applicants to submit the data for her review.

By way of the Office Action mailed January 12, 2006, the Examiner rejected claims 15-45, 48-54, 66 and 67 under 35 U.S.C. § 102(b) as allegedly being anticipated and thus unpatentable over U.S. Patent Number 5,516,569 to Veith et al. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

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Claims 19-27, 30-34, 39-45 and 48-52 have been canceled.

As to claims 15-18, 28-29, 35-38, 53-54 and 66-67, the Examiner alleges that these claims are product-by-process claims and that patentability is based on the product itself. The Examiner further states that Applicants have pointed out that the tables in Veith demonstrate a shakeout value that generally increases as superabsorbent polymer content increase, while the shakeout value of Applicants' invention generally decreases as the superabsorbent material content increases. However, the Examiner feels that other variables including different concentrations of wood pulp fluff, absorbent material, the percent of water added to the web and the shape of the superabsorbent particulate material account for the contrary trends.

Applicants disagree that all of the rejected claims are product-by-process claims. However, even if they were, the product of Veith and Applicants' invention are not the same. To further illustrate this point, Applicants have produced samples in accordance with Veith, the results of which are submitted herewith by affidavit and can be seen as Attachment 1. In an effort to keep other variables constant, the same fiber and the same superabsorbent material was used in Applicants' Example 2 and Example 3 and the Veith comparative samples. Absorbent webs were then produced in accordance with Veith, the details of which can be seen in Attachment 1. The data shows that even when keeping other variables constant, such as those expressed by the Examiner, the product of Veith still exhibits a shakeout value that generally increases when the superabsorbent material content increases, whereas the shakeout value of Applicants' invention (i.e., Example 2 and Example 3) generally decreases as the superabsorbent material content increases. Therefore the product of Veith and the present invention are not the same. For at least these reasons, Applicants submit that the rejection of claims 15-18, 28-29, 35-38, 53-54 and 66-67 have been overcome, and Applicant respectfully requests that the rejection of these claims under 35 U.S.C. § 102(b) be withdrawn.

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By way of the Office Action mailed January 12, 2006, the Examiner rejected claims 15-45, 48-54, 66 and 67 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,516,569 to Veith et al. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Claims 19-27, 30-34, 39-45 and 48-52 have been canceled.

In accordance with MPEP § 2142, the Examiner has the burden of establishing a prima facie case of obviousness by meeting three criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 4899 (Fed. Cir. 1991).

The rejection of claims 15-45, 48-54, 66 and 67 fails to meet at least the second prong of the obviousness test (i.e., there must be a reasonable expectation of success). As described above and based on the comparative samples produced in accordance with Veith, one of ordinary skill in the art would expect a product in accordance with Veith to exhibit a shakeout value trend that generally increases when the superabsorbent material content increases. In contrast, the shakeout value of Applicants' invention has the unexpected result of generally decreasing as the superabsorbent material content increases. Thus, at least the second prong of the test required by MPEP § 2142 has not been met. For at least these reasons, a prima facie case of obviousness has not been established for the rejected claims. Applicants respectfully request that this rejection of claims 15-45, 48-54, 66 and 67 under 35 U.S.C. § 103(a) be withdrawn.

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By way of the Office Action mailed January 12, 2006, the Examiner rejected claims 55-63 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 5,516,569 to Veith et al. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

Claims 57 and 58 have been canceled.

In accordance with MPEP § 2142, the Examiner has the burden of establishing a prima facie case of obviousness by meeting three criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 4899 (Fed. Cir. 1991).

The rejection of claims 55-63 fails to meet at least the second prong of the obviousness test (i.e., there must be a reasonable expectation of success). As described above and based on the comparative samples produced in accordance with Veith, one of ordinary skill in the art would expect a product made in accordance with Veith to exhibit a shakeout value trend that generally increases when the superabsorbent material content increases. In contrast, the shakeout value of Applicants' invention has the unexpected result of generally decreasing as the superabsorbent material content increases. Thus, at least the second prong of the test required by MPEP § 2142 has not been met.

The rejection of claims 55-63 also fails at least the third prong of the obviousness test (i.e., the references must teach or suggest all the claim limitations). As the Examiner admits, "Veith does not disclose a content of at least 90%." (See page 10, section 7 of the Office Action mailed on 1/12/2006.) In addition, since, as described above, the comparative samples made in accordance with Veith exhibit a shakeout value that

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generally increases when the superabsorbent material content increases, one of ordinary skill in the art would not be motivated to produce a product in accordance with Veith having a superabsorbent polymer content of 90%, since the shakeout value would likely be higher than desired. Thus, at least the third prong of the test required by MPEP § 2142 has not been met.

For at least these reasons, a prima facie case of obviousness has not been established for the rejected claims. Applicant respectfully requests that this rejection of claims 55-63 under 35 U.S.C. § 103 be withdrawn.

By way of the Office Action mailed January 12, 2006, the Examiner rejected claims 1-7, 10-14, 64 [sic] and 65 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over U.S. Patent Number 3,901,236 to Assarsson et al. in view of U.S. Patent Number 4,354,487 to Oczkowski et al. This rejection is respectfully traversed to the extent that it may apply to the presently presented claims.

In accordance with MPEP § 2142, the Examiner has the burden of establishing a prima facie case of obviousness by meeting three criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the references must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 4899 (Fed. Cir. 1991).

The rejection of claims 1-7, 10-14, 64 and 65 fails to meet at least the third prong of the obviousness test (i.e., the references must teach or suggest all the claim limitations). Assarsson does not disclose that the web is formed while the superabsorbent material contains at least about 0.5 grams of a liquid it has absorbed per gram of superabsorbent

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material, as required by the rejected claims of Applicants' invention. The Examiner cites column 5 lines 47-49 and column 8 lines 66-68 of Assarsson as allegedly teaching this limitation. However, a closer reading of these citations reveals that they are directed to coating fiber onto individual superabsorbent particles. These individual particles are referred to as "composites" in the Assarsson reference. The particles are then dried and sieved. The dry particles may later be incorporated into a dry airlaid web. (See e.g., column 5 lines 28-64, column 7 lines 21-53 and column 8 lines 62-68.) In contrast, the rejected claims of Applicants require that the web is formed while the superabsorbent material contains at least about 0.5 grams of liquid that it has absorbed per gram of superabsorbent material. The additional teachings of Oczkowski et al. do not overcome the deficiencies of Assarsson. Thus, at least the third prong of the test required by MPEP § 2142 has also not been met.

The rejection of claims 1-7, 10-14, 64 and 65 also fails to meet at least the second prong of the obviousness test (i.e., there must be a reasonable expectation of success). As can be seen by comparing Applicants' Example 2 and Example 3 to Comparative Example 2. Comparative Example 2 was made in accordance with the teachings of Assarsson. It can be seen that Comparative Example 2 exhibits a shakeout value trend that generally increases when the superabsorbent material content increases. In contrast, the shakeout value of Applicants' invention has the unexpected result of generally decreasing as the superabsorbent material content increases. Applicants' invention and the product of Assarsson are not the same. Thus, one of ordinary skill in the art would expect a product made in accordance with Assarsson to be different from Applicants' invention. The additional teachings of Oczkowski et al. do not overcome the deficiencies of Assarsson.

The Examiner has questioned whether Comparative Example 2 is indeed similar to a product of Assarsson, and whether Example 2, Example 3 and Comparative Example 2 show a side-by-side comparison. In response, Applicants point out that the same superabsorbent material (FAVOR 880 available from Stockhausen, Inc., which was sieved to obtain particles in the range of 300 to 600 microns), the same pulp fibers (CR-1654 available from Bowater Inc.) and same equipment were used for the each of the examples

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and comparative example. This was done in an effort to keep various factors constant to, in fact, demonstrate a side-by-side comparison.

In addition, the procedure used to produce Comparative Example 2 is comparable to the teachings of Assarsson. For example, the superabsorbent materials of Comparative Example 2 were swelled with water and wood pulp fibers were coated onto the superabsorbent materials in an air agitation chamber. The coated SAM was then completely dried prior to web formation. Dry webs were then formed utilizing the dry coated particles to form Comparative Example 2. The webs were then tested for shakeout value. Similar procedures and conditions can be found in Assarsson, for example at column 3 lines 32-40, column 5 lines 4-55, column 6 lines 2-13, column 7 lines 43-47, column 8 lines 29-68 and in the Examples. Thus, at least the second prong of the test required by MPEP § 2142 has also not been met.

For at least these reasons, a prima facie case of obviousness has not been established for the rejected claims. Applicant respectfully requests that this rejection of claims 1-7, 10-14, 64 and 65 under 35 U.S.C. § 103(a) be withdrawn.

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.


Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

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The undersigned may be reached at: 920-721-4405.

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Respectfully submitted,
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